

## LEASE

THIS LEASE is executed in quadruplicate as of the \_\_\_\_ day of \_\_\_\_\_, 1969, by and between JOHN V. FARRELL, (\_\_\_\_\_), FRANK LENCZ, (b) (6) (hereinafter collectively called "Lessor"), (b) (6) and KAISER GYPSUM COMPANY, INC., a Washington corporation (hereinafter called "Lessee") with its principal place of business located at 300 Lakeside Drive, Oakland, California, who, in consideration of the terms, covenants and conditions herein contained, hereby covenant and agree as follows:

### ARTICLE A. LEASE; TERM; POSSESSION; RENT; HOLDING OVER; OPTION TO LEASE ADDITIONAL SPACE

Section A-1. Lessor hereby leases to Lessee and Lessee hereby hires from Lessor at the rental and upon the terms and conditions hereinafter set forth approximately 40,000 square feet of that certain real property located at First Avenue South and Front Street, Seattle, Washington, more particularly described in Exhibit A, attached hereto and by this reference hereby incorporated herein and made a part hereof, as said area is delineated in red on the plan attached hereto as Exhibit B, by this reference hereby incorporated herein and made a part hereof, together with approximately 25,000 square feet of a building partially situated on said 40,000 square feet of land, the portion of said building to be leased by Lessee being delineated in red on the building floor plan attached hereto as Exhibit C, by this reference hereby incorporated herein and made a part hereof (said land and building to be leased by Lessee are hereinafter sometimes referred to as the "Leased Premises").

Section A-2. The term of this Lease shall be for ten (10) years commencing on May 1, 1969, and terminating on April 30, 1979; provided, however, that Lessee, at its sole option, may extend the term of this Lease for an additional period of five (5) years by notifying Lessor in writing of its election to extend at least sixty (60) days prior to the date the Lease would otherwise expire. All the terms and conditions of this Lease shall remain in full force and effect in each and every particular during the extended term hereof, except as otherwise specifically provided in Section A-4 below.

Section A-3. Lessor shall, prior to the commencement of the term hereof, complete the construction work and alterations to the Leased Premises in accordance with the plans attached hereto as Exhibit D, attached hereto and by this reference made a part hereof. If the Lessor for any reason whatsoever cannot deliver possession of the Leased Premises to the Lessee at the commencement of the said term, as hereinbefore specified, this Lease shall not be void or voidable, the term of this Lease shall not be extended by any such inability or delay, and Lessor shall not be liable to Lessee for any loss or damage resulting therefrom, but in that event there shall be a proportionate deduction of rent covering the period between the commencement of said term and the time when Lessor can deliver possession; provided, however, that Lessee may, at its option, terminate this Lease upon given written notice to Lessor if the Leased Premises are not available for occupancy prior to June 1, 1969.

Section A-4. Lessee agrees to pay Lessor as rent for the Leased Premises

during the initial ten (10) year term of this Lease the sum of Twenty Seven Thousand and 00/100 Dollars (\$27,000.00) per annum, payable in equal monthly installments of Two Thousand Two Hundred Fifty and 00/100 Dollars (\$2,250.00), payable in advance on the first day of each and every month of said term commencing on May 1, 1969. In the event Lessee exercises its option to extend the term of this Lease for an additional period of five (5) years pursuant to Section A-2 above, the annual rent during such five (5) year period shall be in the amount which bears the same ratio to the sum of Twenty Seven Thousand and 00/100 Dollars (\$27,000.00) that the Consumer Price Index (as hereinafter defined) for the month of May, 1979 bears to said Index for the month of May, 1969. As used herein "Consumer Price Index" shall mean the Consumer Price Index (U. S. Department of Labor Indexes) All Items, New Series (1957-59 = 100) as listed in the publication, Survey of Current Businesses, U. S. Department of Commerce, or any successor to such Index prepared and published by any agency of the United States Government, except that if subsequent to May, 1969, the agency preparing and publishing said Index changes the basis with respect to which said Index is published, the provisions of this Section shall apply appropriate adjustments of the published Indices for the months above specified, so as to give effect of the intention of the parties that the annual rental shall be changed at the commencement of said five (5) year extension period in proportion to changes in the cost of living in May, 1969 compared to such costs in May, 1979. In the event of any dispute between the parties in the interpretation or application of the foregoing provisions, or if for any reason it should prove impossible to accomplish said intention as to the rental applicable during said five (5) year extension period by application of the provisions of this Section, the annual rent during said five (5) year extension period

shall be determined by arbitration as follows: Either party may make written demand on the other party for arbitration of the dispute over the rental rate applicable during said five (5) year extension period; each party shall nominate one arbitrator within thirty (30) days after such demand is made, and the two arbitrators so nominated shall select a third arbitrator; if either party fails to nominate an arbitrator within the time specified, or the two arbitrators cannot agree upon a third arbitrator within an additional thirty (30) days, the arbitrator for the party failing to nominate, or the third arbitrator, or both if the situation demands, shall be appointed by a judge of the United States District Court for the Western District of Washington upon application of either party. The three arbitrators so selected shall determine the controversy and any decision thereon shall be final and binding upon Lessor and Lessee who shall bear the cost of such arbitration equally between them, excluding the fees of the arbitrators nominated by each party and attorneys' fees. The arbitration shall otherwise be conducted in accordance with the rules of the American Arbitration Association. This Lease shall continue in full force and effect during the arbitration proceedings at the rental rate specified for the initial ten (10) year term of the Lease, subject to retroactive adjustment of the rent for the elapsed period of the five (5) year extension period by the award in the arbitration proceeding.

Section A-5. Lessee shall pay prior to delinquency \_\_\_\_\_% of real property taxes assessed against Lessor's real property described in Exhibit A applicable to the period of Lessee's possession of the Leased Premises, and \_\_\_\_\_% of the real property taxes assessed against the building containing a part of the Leased Premises applicable to the period of Lessee's possession. Lessee shall pay the foregoing

amounts to Lessor within ten (10) days after receipt of Lessor's invoice therefor together with supporting tax statements from the local assessor's office separately stating the tax applicable to the real property itself (excluding any and all improvements upon said property) and the tax applicable to the building in which a part of the Leased Premises are situated. Lessee shall have no liability for real property taxes attributable to and assessed against any alterations, additions or improvements by other tenants or Lessor which do not directly improve or benefit the Leased Premises or which are not a part of the Leased Premises.

Section A-6. In the event that after the expiration of the term of this Lease Lessee shall with the consent of Lessor hold over in the possession of the Leased Premises, then such possession of Lessee shall be construed as a tenancy from month-to-month at a rental equal to 1/12 of the annual rental specified in Section A-4 above, in effect during the last year of the Lease term, per month and otherwise under the terms and conditions herein specified insofar as applicable. Any such tenancy from month-to-month shall continue until terminated by the Lessor or Lessee by the giving of at least thirty (30) days' prior written notice of such termination to the other party.

Section A-7. Lessee shall have the option to lease additional space in the building situated on the Leased Premises, consisting of approximately 10,000-12,000 square feet of space over and above the area leased by Lessee hereunder. Said option shall be exercised in writing by Lessee at any time after June 1970 during the term hereof at least 365 days prior to the date Lessee desires to lease said additional space. Rental hereunder shall be increased upon the effective date of the

lease of said additional space at the rate of nine cents (\$.09) per square foot per month of additional space leased; provided, however, that if Lessee exercises the option to extend this Lease contained in Section A-2 above, said rental rate for additional space shall be subject to adjustment in the manner prescribed in Section A-2.

Section A-8. Lessee shall pay, as additional rent hereunder, all charges for heat, light, water, trash removal, and other public utility services provided to the Leased Premises during the term of this Lease. Where possible, all such utilities' services shall be separately metered or stated for the Leased Premises and shall not include charges for services provided to other tenants or property of Lessor, but if invoiced charges by a public utility include charges for services provided to Lessee and other tenants or parties, Lessee shall be liable only for the proper and fair portion of such invoiced charges attributable to services provided to Lessee upon the Leased Premises.

Section A-9. The rail spur track crossing the Leased Premises shall be for the sole and exclusive use and benefit of Lessee and the tenant occupying the remaining portion of the building partially situated upon the Leased Premises. No other party or parties whatsoever shall be entitled to use or have the benefit of said rail spur without the prior written consent of Lessee therefor.

ARTICLE B. PARTICULAR AGREEMENTS OF LESSEE

Section B-1. Lessee agrees to pay the rent in the amount, at the times and in the manner herein provided, and to keep and perform all the terms and conditions of this Lease on its part to be kept and performed, and at the expiration or

sooner termination of this Lease, to peaceably and quietly quit and surrender to Lessor the Leased Premises in good and sanitary order and repair, reasonable use and wear thereof and damage by fire, acts of God, explosion or other casualties excepted.

Section E-2. Lessee shall not use or permit the Leased Premises to be used for any purpose except the conduct of general warehousing and manufacturing, without the prior written consent of Lessor.

Section E-3. Lessee shall not commit or suffer to be committed any waste or nuisance upon the Leased Premises. Lessee may, at Lessee's cost, install partitions, personal property, air and water lines, electrical switches, lines and junction boxes, and a gate in the fence to be constructed by Lessor providing access between the Leased Premises and the property of Glacier Sand and Gravel Co. Except for the foregoing, Lessee shall not make, nor suffer to be made any alterations of the Leased Premises or any part thereof without the prior written consent of Lessor, and any additions to or alterations of the Leased Premises, except personal property, manufacturing equipment, air and water lines and electrical switches, junction boxes and lines installed by Lessee, shall at the expiration or other termination of this Lease become a part of the realty and belong to Lessor.

Section E-4. Except as otherwise explicitly permitted under the terms of this Lease, at no time during the term of this Lease shall Lessee vacate or abandon the Leased Premises, and in the event of any such abandonment, vacation or surrender of the Leased Premises or dispossession of Lessee by process of

law or otherwise, any personal property owned by Lessee and left in the Leased Premises shall, subject to the existence of any prior liens, be deemed to be abandoned at the option of Lessor.

Section B-5. Lessee shall keep the Leased Premises free and clear of and from any and all mechanic's, materialmen's and other liens for work or labor done, services performed, materials or appliances contributed, used or furnished to be used in or about such premises for or in connection with any operations of Lessee, any alteration, improvement or repairs or additions which Lessee may make or permit or cause to be made, or any work or construction by, for or permitted by Lessee on or about the Leased Premises, and at all times promptly and fully pay and discharge any and all claims upon which any such lien may or could be based, and to save and hold the Lessor and all of the Leased Premises free and harmless of and from any and all such liens or claims of liens and suits or other proceedings pertaining thereto; provided, however, that Lessee may contest any such lien if it notifies Lessor of its intention so to do within ten (10) days after the filing of such lien and in such case Lessee shall not be in default hereunder until five (5) days after the final determination of the validity of such lien, nor then if Lessee shall satisfy and discharge such lien to the extent held valid.

Section B-6. In its use of the Leased Premises, Lessee shall conform with all applicable municipal ordinances and state and federal statutes which may now or hereafter during the term of the Lease be in force.

Section B-7. Lessor shall be entitled at all reasonable times to go upon and into the Leased Premises for the purpose of inspecting the same or for

the purpose of inspecting the performance by Lessee of the terms and conditions of this Lease and also for the purpose of maintaining the building or of making repairs, alterations or additions to any other portion of such building not being a part of the Leased Premises, or for the purpose of posting and keeping posted thereon notices of nonresponsibility for any construction, alteration or repair thereof, as required or permitted by any law or ordinance, and during the last thirty (30) days of the term of this Lease for the purpose of placing on the Leased Premises any usual or ordinary "To Let" or "To Lease" signs or exhibiting the Leased Premises to prospective lessees thereof.

Section B-8. Lessee agrees to indemnify Lessor against and save Lessor harmless from all demands, claims, causes of action or judgments and all reasonable expenses incurred in investigating or resisting the same, for injury to persons, loss of life or damage to property arising out of Lessee's use or occupancy of the Leased Premises except if caused by the act or negligence of Lessor, its contractors, agents or employees. Lessor agrees to indemnify Lessee against and save Lessee harmless from all demands, claims, causes of action or judgments and all reasonable expenses incurred in investigating or resisting the same, for injury to persons, loss of life or damage to property if caused by defects in original construction or by the act or neglect of landlord, its contractors, agents or employees.

Section B-9. Lessee shall provide ordinary maintenance for the interior of the building occupied by Lessee, and for the exterior surfaces of the building surrounding the area occupied by Lessee, in order to keep said building in good

and reasonable condition, but Lessee shall have no obligation to repair any damage or deterioration arising from structural or design defects or failures, or damage arising from any casualty, peril, act of God, force majeure, or the negligent or intentionally tortious act or omission of Lessor or any third party.

#### **ARTICLE C. PARTICULAR AGREEMENTS OF LESSOR**

**Section C-1.** Lessor covenants and agrees to keep and perform all of the conditions hereof to be kept and performed by Lessor and that Lessee paying the rent in the amount, at the times and in the manner herein provided, and keeping and performing all the terms and conditions hereof on its part to be kept and performed, may, subject to the terms and conditions hereof, have and hold the Leased Premises for the term hereof, without let or hindrance by Lessor or any other party, whether or not claiming under or through Lessor.

**Section C-2.** Lessor shall, without cost or expense to Lessee, keep and maintain the Leased Premises and every part thereof free from structural or design defects or damages.

**Section C-3.** If at any time during the term of this Lease, as the same may be extended, Lessor shall receive a bona fide offer to purchase the real property described in Exhibit A, or part thereof, from an interested third party, Lessor shall afford Lessee an opportunity thereafter to meet the best bona fide written offer received by Lessor from such third party or parties to purchase said property or part thereof. Lessee shall be given sixty (60) days from the date of Lessor's submission to Lessee of such written offer to elect whether or not it desires to purchase said property or part thereof at the price and upon the terms

and conditions contained in such offer. The title of any purchaser of the real property containing the Leased Premises shall in any event be subject to this Lease.

Section C-4. Lessor shall carry fire and physical damage insurance at all times during the term hereof for the full, current replacement value of the building partially situated upon the Leased Premises, insuring against all casualties and risks generally covered by an extended risk policy. Said policy shall name Lessee as an additional insured, shall contain a waiver of subrogation clause on the part of Lessor and the insurer in Lessee's favor, and shall contain a clause reciting that said insurance shall be cancellable only upon ten (10) days' prior written notice addressed to Kaiser Gypsum Company, Inc. at 300 Lakeside Drive, Oakland, California - 94612, Attention: Insurance Manager. Lessee shall pay a proportionate share of the annual cost of such insurance, within fifteen (15) days after receipt of Lessor's invoice therefor, determined as follows: annual cost of such insurance times a fraction whose numerator is the number of square feet in the building occupied by Lessee and whose denominator is the total square feet in said building. In the event of damage to or destruction of said building, Lessor agrees to look only to said insurance for reimbursement, and Lessee shall have no liability to Lessor whatsoever for damage to or destruction of said building attributable to any casualty, peril, act of God, or force majeure.

ARTICLE D.    DAMAGE OR DESTRUCTION OF BUILDING OR LEASED PREMISES - CONDEMNATION

Section D-1. In the event of damage to the Leased Premises not amounting to total destruction thereof by fire, explosion, enemy action or other hazard or

casualty during the term of this Lease, Lessor shall forthwith repair or cause the same to be repaired with reasonable dispatch, and in any event, not later than sixty (60) days after the occurrence of such damage. In the event of such repair within the time above specified, such damage or partial destruction shall not effect a termination of this Lease, except that if the Leased Premises shall be partly or wholly untenable, the rent payable hereunder shall be apportioned and abated to an extent corresponding with the time during which, and the extent to which, the Leased Premises may have been untenable. If the Leased Premises are totally destroyed, or if such repairs cannot be completed within sixty (60) days from the date of such damage or partial destruction, Lessee may terminate this Lease effective as of the date of such damage or destruction by giving written notice of termination to Lessor. If Lessee does not exercise its right to terminate this Lease as above provided, Lessor may proceed to make such repairs within a reasonable time, this Lease continuing in full force and effect, with the rent payable hereunder proportionately apportioned and abated as hereinabove provided.

Section D-2. If the whole of the Leased Premises or the building thereon shall be taken for any public or quasi-public use under any statute or by right of eminent domain, this Lease shall immediately cease and terminate upon the vesting of title in the public or quasi-public agency or the taking of possession pursuant thereto, and rent shall be apportioned and abated as of the date of such termination. If a part, less than the whole, of the Leased Premises or the building thereon shall be taken for any public or quasi-public use under any statute or by right of eminent domain, and the taking effectively renders the remainder of the Leased Premises

or the building thereon unsuitable for the conduct of Lessee's business, Lessee may, at Lessee's option, terminate this Lease and the rent shall be apportioned and abated as of the date of such termination; if Lessee does not elect to terminate this Lease in the event of a partial taking by written notice to Lessor given within thirty (30) days after delivery to Lessee by Lessor of documents indicating what portion or portions of the Leased Premises or the building thereon have been or will be so taken, this Lease shall continue in full force and effect but the rent attributable to the term of this Lease following the date of vesting of title or taking of possession pursuant to such taking shall be reduced in proportion to the portion of the Leased Premises or the building thereon so taken. Nothing contained in this Lease shall be deemed or construed to prevent Lessee from interposing and prosecuting in any condemnation proceeding a claim for the value of any fixtures or improvements installed in or made to the Leased Premises by the Lessee and for the value of Lessee's leasehold interest hereunder.

**ARTICLE E.    TERMINATION OF LEASE - DEFAULT**

**Section E-1.**    In the event that Lessee shall fail or neglect to do or perform any act or thing herein provided by it to be done or performed, and such failure shall continue for a period of fifteen (15) days after written notice from Lessor specifying the nature of the act or thing to be done or performed, then and in any such event, unless Lessee shall have commenced promptly after receipt of such notice to rectify such default and shall prosecute the same with diligence and continuity to completion, Lessor shall have the right at its option, upon written notice to Lessee forthwith to terminate this Lease and all rights of Lessee hereunder shall thereupon cease and Lessor without further notice to Lessee shall have

the right immediately to enter into and upon the Leased Premises and take possession thereof without incurring any liability to Lessee or to any persons occupying or using the Leased Premises for any damage caused or sustained by reason of such entry upon the Leased Premises, all without any prejudice to any rights and remedies which Lessor may have for default either under this Lease or under the laws of the State of Washington, or otherwise.

Section E-2. All remedies hereinabove and hereinafter conferred upon Lessor shall be deemed cumulative and no one exclusive of the other or any other remedy conferred by law.

Section E-3. If Lessor fails or neglects for any reason to take advantage of any of the terms hereof providing for the termination of this Lease, or if Lessor, having the right to declare this Lease terminated, shall fail to do so, any such failure or neglect of Lessor shall not be or be deemed to be a waiver of any of the covenants, terms or conditions of this Lease or of the performance thereof, and none of the covenants, terms or conditions of this Lease or of the performance thereof can be waived except by the written consent of Lessor, nor can this Lease be amended or modified in any respect except by an instrument in writing executed by both Lessor and Lessee.

#### ARTICLE F. MISCELLANEOUS

Section F-1. If any action at law or in equity shall be brought to recover any rent under this Lease or for or on account of any breach of or to enforce or interpret any of the covenants, terms or conditions of this Lease, or for the recovery of the possession of the Leased Premises, the prevailing party shall be

entitled to recover from the other party as a part of prevailing party's costs a reasonable attorney's fee, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

Section F-2. All notices, demands or other writings to be given, made or sent hereunder, or which may be so given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed to the respective parties as follows:

Lessor: Mr. and Mrs. John V. Farrell, and  
Mr. and Mrs. Frank Lenci  
18520 Normandy Terrace, S. W.  
Seattle, Washington - 98166

Lessee: Kaiser Gypsum Company, Inc.  
300 Lakeside Drive  
Oakland, California - 94604  
Attention: Controller

The address to which any notice, demand or other writing may be given or made or sent to either party may be changed upon written notice given by such party as above provided.

Section F-3. Lessee shall not assign, mortgage or pledge this Lease, nor sublet the Leased Premises, or any part thereof, without the written consent of the Lessor first had and obtained. Notwithstanding anything to the contrary contained in this Section F-3, Lessee shall have the right on one or more occasions to assign this Lease or any interest therein or to sublet the Leased Premises in whole or in part to any one or more subsidiaries, parent or affiliated companies of Lessee without the written consent of Lessor; provided, however, that any such assignee

or sublessee may not engage in a use of the Leased Premises not permitted hereunder and that any such assignment or subletting shall not relieve Lessee of its liabilities and obligations hereunder.

Section F-4. Time is hereby expressly declared to be of the essence of this Lease and of each and every covenant, term, condition and provision hereof.

Section F-5. Wherever in this Lease Lessor's written consent or approval is required, Lessor agrees that such consent or approval shall not be unreasonably withheld.

Section F-6. The language in all parts of this Lease shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either Lessor or Lessee. The Article headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way limiting or amplifying the provisions hereof.

Section F-7. This Lease and the covenants and conditions herein contained shall be binding upon and shall inure to the benefit of and shall apply to the respective successors and assigns of Lessor and Lessee and all references in this Lease to "Lessee" shall be deemed to refer to and include successors and assigns of Lessee without specific mention of such successors and assigns.

**Lessor**

**Dorothy E. Farrell**

## Ruth Lenci

**KAISER GYPSUM COMPANY, INC.**

By Eryce Simpson, Assistant Secretary